

REAL PROPERTY COMMITTEE
3:00 p.m., Monday, February 8, 2016

The regular meeting of the Real Property Committee was held at 3:00 p.m., Monday, February 8, 2016 in the City Hall Conference Room, 1207 Palm Boulevard, Isle of Palms, South Carolina. Attending the meeting were Councilmembers Harrington and Rice, Chair Bergwerf, Administrator Tucker, Assistant Administrator Fragoso and Clerk Copeland; a quorum was present to conduct business.

1. Chair Bergwerf called the meeting to order and acknowledged that the press and public were duly notified of the meeting in accordance with the Freedom of Information Act.

2. Approval of Previous Meeting's Minutes

MOTION: Councilmember Harrington moved to approve the minutes of the regular meeting of January 6, 2016 as submitted; Councilmember Rice seconded and the motion PASSED UNANIMOUSLY.

3. Citizens' Comments

Elizabeth Campsen, 32 Intracoastal Court, stated that she was present to address the matter of a thirty-year (30 yr.) lease for Morgan Creek Grill. She reported that she had attended the ATM meeting in the fall to give input related to the marina redevelopment plan; many people were excited at the prospect ATM represented for improvements at the marina. She expressed the opinion that "the cart might be getting in front of the horse" to go into a thirty-year (30 yr.) lease before getting the report from ATM; she noted that Morgan Creek Grill currently has four (4) years remaining on its lease, so they are not unable to operate. Ms. Campsen was aware that Mr. Clarke was interested in making significant improvements to the restaurant, but ATM might recommend the relocation of the restaurant on the marina site. When the marina bond is paid off in 2019, the City might have a different consideration relative to the revenue stream coming from the marina. Ms. Campsen stated that Phillip and Cathy Smith agreed with her suggestion to delay action on the lease; the reason that Mr. Smith was not present was that he is out of town. She urged the Committee not to act on the lease extension since it could interfere with implementation of ATM's recommendations for the marina.

4. Comments from Marina Tenants

A. Consideration of Morgan Creek Grill Lease Amendment

Jay Clarke, owner and Carla Pope, Operations Manager, were present to represent Morgan Creek Grill (MCG), and Ms. Pope stated that, as requested at the January meeting, they have provided for the Committee a list of the capital improvements they have made to the property since 2002 and a list of the capital improvements planned if they succeed in getting the lease extension they are seeking. In addition, they have had the opportunity to speak with members of the Committee, two (2) at the restaurant and one (1) in City Hall, to show them "the good, the bad and the ugly" of the restaurant. In addition, they provided an updated schedule of rent, licenses and taxes paid to the City since 2002; the schedule also showed how the business has grown over the years to now exceed four million dollars (\$4,000,000) per year.

Ms. Pope recalled that, when lease negotiations began, MCG presented a lease with multiple changes; the amendment they are seeking now has only one (1) change, i.e. six (6) extensions of five (5) years each for a total of thirty (30) years, to be able to get the type of financial support they need to operate such a seasonal restaurant. She also reported that, at this time, the restaurant is showing a small, but reasonable, profit, which they have not always done. Per discussion with Administrator Tucker, they have updated the exhibit that lists the assets originally belonging to the City that no longer exist and the assets remaining for which the restaurant was now taking full responsibility; with these changes the lease between the City of Isle of Palms and Morgan Creek Grill is a true triple-net lease.

Mr. Clarke stated that the restaurant would be unable to operate as it has in the past and maintain the building and continue improvements without the lease extension; he reiterated that financial institutions want to see longer term leases. He noted a Councilmember had expressed concerns similar to those of Ms. Campsen relative to the marina master plan, but he opined that over the years he has shown his ability to work with the City, and he plans to continue to do so with regard to the marina master plan. He stated that his goal at this meeting was to have the amendment for a lease term extension sent to City Council for approval; Mr. Clarke added that he did not understand why they had to struggle to get the lease extension after the City entered into a thirty-year (30 yr.) lease with the marina manager and the store. He concluded by stressing again the "absolute necessity" for the restaurant to get the lease term extended.

Councilmember Rice asked if Mr. Clarke was saying that, if the extension were not granted, MCG would not continue to operate, and he responded that he was uncertain because it would be very difficult.

Councilmember Rice stated that she could not support a thirty-year (30 yr.) lease; she opined that it would be too long and "tied things up too long." The Councilmember stated that there were things in the lease that she would like to see changed; she noted that the lease did not contain anything about the dock – Chair Bergwerf interrupted to say that the dock was included in an amendment. The Councilmember commented that she did not think the restaurant should control the ingress and egress to the City dock.

Ms. Pope replied that MCG does not control the dock; the amendment states that MCG must allow ingress and egress to all of the City docks, and they do it.

Noting the location of the restaurant dumpster, the Councilmember stated that they impair the use of the area by residents, and the area could have a better use when the master plan is presented, possibly storage and access for kayakers or paddle boarders.

Ms. Pope remarked that all of the marina tenants have an investment in the master plan, are excited to make it work and are willing to do the give-and-take to make it work.

Councilmember Harrington indicated that he was impressed with the improvements and the plan for future improvements, but he had expected to see the list of future improvements to be prioritized. He stated that he was sensing little support for the thirty-year (30 yr.) lease, and he understood that the longer term lease was needed to secure financing to make some of the

improvements. He asked Mr. Clarke if he was amenable to a compromise that Council could support.

Mr. Clarke said that he had spoken with his accountant about a lesser term, and they had agreed that the minimum would be twenty (20) years to continue to improve the property.

Councilmember Harrington asked the City Administrator whether or not the City had options in the lease to terminate it if an issue arose with the restaurant, and the Administrator explained that the lease could be terminated by the City if the tenant were in default, but otherwise the lease could only be terminated by mutual agreement.

The Administrator then sought clarification on a term of twenty (20) years. Would the twenty (20) years be sixteen (16) in addition to the remaining four (4) or twenty (20) years in addition to the remaining four (4)?

Mr. Clarke responded that it was the latter – sixteen plus four (16 + 4). He then repeated his question about the difference between his request for thirty (30) years and the marina manager's request.

Having taken pictures on a recent visit to the marina, Chair Bergwerf expressed concern about a "NO PARKING" sign, a large truck and trailer nearly blocking the entrance to the City docks. Mr. Clarke explained that he had been approached by Mr. Berrigan about installing the sign to prevent anyone from blocking the entrance to the City docks, and they had jointly agreed and decided upon the best location.

Mr. Clarke responded to Councilmember Rice that he could relocate the dumpsters now; he agreed that they do not belong there at the water. One (1) possible location would be on the pad behind the restaurant and fenced in, but Carla assured the Councilmember that the dumpsters would be moved somewhere by the end of March.

Mr. Clarke reported that he had investigated the possibility of installing an elevator in the restaurant, and he was told that it was possible and the cost would be in the neighborhood of one hundred twenty-five thousand dollars (\$125,000). He indicated that he would inquire about partnering with the City and/or seeking a grant to help fund it when the time comes.

MOTION: Chair Bergwerf moved to recommend an extension to the term of the Morgan Creek Grill lease for four (4) options of four (4) years each plus the four (4) years remaining in the current lease for a total of twenty (20) years; Councilmember Harrington seconded.

Councilmember Rice stated that she would be comfortable with ten (10) additional years for a total of fourteen (14), and Mr. Clarke voiced that he thought twenty (20) years was a good compromise. Mr. Clarke remarked that a term of fourteen (14) years would make things very difficult; he much preferred twenty (20) years, like they had in the beginning.

Chair Bergwerf expressed her impression that Mr. Clarke would qualify for financial assistance with a lease of seven to ten (7-10) years.

Mr. Clarke said that a triple-net lease was typically longer than that; in a shorter term lease, the tenant was not totally responsible for the structure from roof to foundation. He stated that he wanted to continue to improve the building, but, with less than twenty (20) years, he questioned that he could.

Chair Bergwerf and Councilmember Harrington, respectively, withdrew the motion and second.

MOTION: Chair Bergwerf moved to recommend four (4) options of three (3) years each plus the four (4) years remaining for a total of sixteen (16) years; Councilmember Harrington seconded.

Responding to the Administrator's question about whether there was anything the City wanted in return for the lease extension, Councilmember Harrington said that he wanted to see the list of future improvements prioritized, at least, by year.

Mr. Clarke indicated that to anticipate the improvements would be difficult and asked if the other tenant had been asked to do this.

One (1) comment the Administrator has heard is that the docks assigned to MCG are under-utilized by the restaurant and its tenants and possibly, in return for the longer term lease, MCG might be willing to give up control of those seven (7) slips; the motoring public that want to come to the restaurant would then contact the marina manager to make arrangements.

Ms. Pope commented that those docks were not under-utilized in season, and it is cost prohibitive for people to pay to go to the marina when they want to park the run-about to go to the restaurant for lunch. Mr. Clarke added that the finger piers are extremely difficult to navigate with anything beyond a fourteen or sixteen foot (14-16 ft.) jon-boat. In Mr. Clarke's opinion, these docks are a huge asset to MCG and he was not interested in giving them up; they constitute a part of the public access to the restaurant.

Chair Bergwerf said that she understood the need for the docks, but she thought they should be marked more clearly.

Councilmember Rice continued that she did not see any reason for MCG to control the inside docks because she did not think many people used them to go to the restaurant, but Mr. Clarke disagreed. He reported that a group of about fifteen (15) women have started to come to the restaurant regularly and they get to the marina on their paddle boards and use the inside docks.

Councilmember Rice thought the restaurant's dock space could be reduced by forty percent (40%) to give residents more access to the water. She stated that she sees her role as one to represent the residents and their access to the water.

Ms. Pope commented that no one from the restaurant patrols the docks to prevent people from using them; she reported that people come and go from those docks all day.

Chair Bergwerf remarked that she thought MCG could garner some good will with Council if they were to come before Council to present a change in the language of the section in the lease on the docks stating that they welcomed residents with their kayaks and paddle boards.

Councilmember Rice asked that the following language be included in the lease relative to the dumpsters:

“must contain and consolidate dumpsters and build a tasteful enclosure.”

Mr. Clarke stated that he would put up some type of enclosure for the dumpsters this spring, but it would be very difficult to do so without a lease extension of sixteen (16) years (20 year total).

Administrator Tucker explained that, if this language were to be sent to Council, the lease would have to be re-drafted by the City Attorney, the appropriate legal wording added, and that amendment would have to go through two (2) readings of Council. The final product would not be ratified for at least two to three (2-3) months.

Councilmember Rice wanted the language to be formally added to the lease.

Amendment: Councilmember Rice moved to amend the motion to include “”Must contain and consolidate the dumpsters and build a tasteful enclosure for them” in the lease for Morgan Creek Grill; Councilmember Harrington seconded and the amendment PASSED UNANIMOUSLY.

Amendment: Councilmember Rice moved to amend the motion to state the Morgan Creek Grill will no longer control the marsh-side dock.

The motion died for lack of a second.

With permission from the Chair, Mrs. Campsen asked if possibly language could be added to the lease amendment some type of reciprocal agreement between parties that, once the ATM plan was presented, issues of adequate parking and resident access, etc. would then be negotiated between the City and its marina tenants.

The Administrator clarified that language could be added to the draft lease that talks about not doing anything to inhibit public access for passive recreational activities and to agree to behave cooperatively to make concessions for a future master plan at the marina.

In Mr. Clarke’s opinion, if such an agreement were to be drafted, it should go to all marina tenants in the form of modified leases.

VOTE on the AMENDED MOTION: The amended motion PASSED UNANIMOUSLY.

MOTION: Councilmember Rice moved to re-order the *Agenda* to take up Item A under New Business; Councilmember Harrington seconded and the motion PASSED UNANIMOUSLY.

6. New Business

A. Consideration of Leasing a 20'x30' area of City property behind the Dinghy

Malcolm Burgis and Brett Jones were present to represent The Dinghy. Administrator Tucker stated that this piece of land is an underutilized space in the small City parking lot behind The Dinghy that they would like to use for storage. She stated that the management of The Dinghy should contact Director Kerr to ensure that the area could be used as described.

Mr. Burgis reported that he spoke with the Director earlier in the day and had been told that the use as storage would not conflict with the property's zoning regulations; Director Kerr did note that the storage building must be on a slab and anchored down.

Chair Bergwerf asked how the rent for the space would be determined, and the Administrator indicated that she has not considered the rent since she did not know whether the Committee would agree to a lease.

Director Pitts suggested that, before any agreement was reached, the City should analyze the cost to remove the dumpsters for both The Windjammer and The Dinghy, assuming that it was cost effective for them to use the City compactor. If the results are that using the compactor was cheaper or the same as the dumpsters, the dumpsters could be removed. The Director noted that the removal of the dumpsters would provide more space and that possibly the City should subsidize surrounding businesses to encourage them to use the compactor by subsidizing the cost to them if it exceeds what they are paying for dumpsters.

Mr. Burgis stated that his cost for the dumpsters was approximately six thousand dollars (\$6,000) per year.

The Director noted that some Front Beach businesses must use the compactor because they have no space on which to put a dumpster; from the viewpoint of Public Works, the fewer dumpsters the better.

Mr. Burgis indicated that more time would be spent dumping at the end of the day if they used the compactor, and Brett Jones stated that getting the trashcans to the compactor from his business was not surfaced, but was dirt.

Administrator Tucker asked if the businesses were to commit to use of the compactor, the City could make it more convenient for them; she indicated that a lease was possible, but this analysis should be completed before an agreement for the property was reached. In addition, the Administrator said that she would investigate a fair lease cost.

5. Old Business

B. Update on parking lot lease and future management

Mr. Burgis stated that he had reviewed the lease that has a minimum lease rate of one hundred fifty-thousand dollars (\$150,000) and thirty percent (30%) of everything over one hundred fifty thousand dollar (\$150,000).

The Administrator reported that the RFP was posted to the City's website and that she had sent all Councilmembers the information on what was different in the RFP, i.e. the increase in the base rent, the increase in the daily rates and the offer to operate in the off-season. Since the bidder would decide what the off-season use would be, they were to submit to the City a bid for what percentage of gross revenue they would pay to the City. The bid opening is scheduled for 2:00 p.m., Friday, February 12th.

Since Council must enter into leases via ordinance with two (2) readings, the winning bidder will actually have less than a full year for the first year of the lease; therefore, the first year's lease would be reduced.

C. Discussion of off-season use of the County Park

According to the Administrator, this subject was deliberated upon at the January meeting, and the consensus of the Committee was that staff has enough on its plate currently and should not take on more. The topic was left on the *Agenda* because there was dialogue in another committee about expanding offerings and for the Recreation Department to do some cooperative activities with Charleston County PRC and other remote locations on the island.

D. Update on golf cart path between 18th and 20th Avenues

Administrator Tucker reported that the City was waiting for the design to submit to SCDOT for the encroachment permit. Assuming the receipt of the encroachment permit, the City would then go out for bid.

E. Discussion of Beach Preservation

The Administrator reported that Coastal Science and Engineering (CSE) was to make a presentation to the Wild Dunes Community Association (WDCA) on March 12th to update them on where the City was with beach restoration. She reminded the Committee that the City had decided to focus its efforts on an off-shore dredging project rather than another shoal management project because the City would be limited with where it could place sand. In the areas with sandbags or wave dissipation devices, their removal would be required before they could receive sand, and, if the project did not last very long, they would be back in the same situation of replacing the sandbags and wave dissipation devices.

The City has filed a claim with FEMA for the damages were caused by Joaquin, but it is only a small part of the problem; Joaquin exacerbated an existing problem.

The off-shore dredging project is expected to cost in the neighborhood of fifteen million dollars (\$15,000,000), and the City will need funding from every possible source. She informed the Committee that Governor Haley has put forty million dollars (\$40,000,000) in her proposed budget for beach restoration. At the moment, the City's engineers are working on the design for this next project.

The Administrator cautioned the Committee that some people will object to the use of federal money because Joaquin did not cause the erosion problem; it only made it worse. Other

objections may revolve around public access, only a small portion of that area qualifies under OCRM's guideline definition for public access.

F. Review of FY17 Revenue Budget

Since all Committee members have reviewed the revenue budget at another Committee and no one had any questions, the Chair moved forward on the *Agenda*.

G. Discussion of Encroachment on 23rd Avenue Beach Access

Administrator Tucker explained that the people who live next to the 23rd Avenue beach access have the right of ingress and egress for their driveway on the beach access, but the City has had the beach access surveyed and the residents are encroaching on to the access with a French drain, landscaping, part of the driveway and vehicles. The question is what does the City want the next step to be? The concern is how much encroachment the City will allow before it is too much. The options before the Committee were as follows:

- Grant the home owner an easement to keep what is in place now, but with no additions; or
- Grant the homeowner some of the actual footage of the beach access, with nothing further to be added, or
- Continue as is

Speaking philosophically, the Administrator commented that she was always reluctant to give away anything that is public, but she added that it has been done before on 21st Avenue when the City gave the adjacent property owner some footage of the access.

Councilmember Rice asked if the house has a new owner; to which the Administrator answered that this owner has been there several years.

Councilmember Rice recalled a request years back when a resident asked for space at 11th Avenue, and the City denied it. The Administrator noted that this resident has not asked for anything.

Chair Bergwerf opined that the homeowner has abused a privilege given to him.

Administrator Tucker answered that the resident had gone to Director Kerr when the survey was made, and he informed them that the City had received complaints that they were blocking the beach access and encroaching on the right-of-way, but the City has not enforced on them in any way.

Although the house is elevated, the height is not enough to allow them to park a large SUV under it. In a large fenced-in area behind their home, they park their boat and trailer, but always pull the vehicle pulling the boat out of the enclosure.

Chair Bergwerf stated that problems would come up when the new parking plan was implemented; someone will see two (2) cars parked there and feel they will join them.

Councilmember Rice suggested that they park their cars with their boat.

Relative to a City staffer speaking with the property owner, the Administrator opined that the City should present the owner with a solution.

Chair Bergwerf suggested that their vehicles must be parallel parked and the number of vehicles could be limited.

Administrator Tucker suggested that a written agreement be drawn up to be sign by the City and the owner that would limit the number of vehicles and indicate that there would be no further encroachments into the beach access. She thought this would be a reasonable compromise and not create a hardship on the owner.

The Administrator indicated that she would get additional legal advice.

6. New Business

B. Recommendation of Award of Contract to IPW Construction in the amount of \$23,085 for City Hall Repairs

Administrator Tucker referred to Director Kerr's recommendation for IPW Construction, the low bidder, to do the repair work.

MOTION: Councilmember Harrington moved to recommend the award of a contract to IPW Construction in the amount of \$23,085 for City Hall repairs; Councilmember Rice seconded.

Councilmember Bergwerf advised the Administrator to have a list of the specific repairs that will be included.

VOTE: The motion PASSED UNANIMOUSLY.

7. Miscellaneous Business

All tenants were current with their rent payments.

Next Meeting Date: 2:00 p.m., Thursday, March 3, 2016 in the Conference Room

8. Adjournment

MOTION: Councilmember Rice moved to adjourn the meeting at 5:23 p.m.;

Respectfully submitted:

Marie Copeland
City Clerk